



Performance Audit Contract Accessibility Could Be Improved

July 2016



10-2016

Office of the City Auditor

City of Kansas City, Missouri



Office of the City Auditor

21st Floor, City Hall
414 East 12th Street
Kansas City, Missouri 64106

(816) 513-3300
Fax: (816) 513-3305

July 27, 2016

Honorable Mayor and Members of the City Council:

This audit of contract accessibility focuses on the city's ability to access its executed contracts. The city executes hundreds of contracts including cooperative agreements with other jurisdictions and entities, contracts for goods and services, and leases of city property.

In our test of contract accessibility, we found contracts identified through the city's financial system and the city's legislative tracking system were accessible. There are contracts that are not included in either of those systems that we were not able to test for accessibility.

City contracts are not centralized, although city regulations require centralization. Law Department staff reported difficulty accessing some city contracts that have become subjects of dispute including contracts that did not involve immediate financial obligations on the part of the city. Lost contracts can result in financial loss to the city. A recommended practice for contract management is a centralized contract repository. To effectively manage and defend contracts, the city must know the location and be able to access them easily. A centralized repository would provide staff in different departments and locations easier access and help ensure contracts are available over the long-term.

An electronic, centralized contract repository would further improve ease of contract access as well as provide staff with the ability to organize and search contracts. An electronic system could also provide easy online public access to contracts. The city's open data policy as well as public procurement recommended practices support online public accessibility of contracts.

We make recommendations intended to improve the city's ability to meet the changing needs of the city's organizational structure and improve contract accessibility and transparency.

The draft report was sent to the city manager on June 28, 2016 for review and comment. His response is appended. We would like to thank staff in all city departments for their assistance with our sample of contract accessibility and specifically Procurement Services Division staff for their technical assistance explaining the city's contracting processes during this audit. The audit team for this project was Jason Phillips and Sue Polys.

Douglas Jones
City Auditor

Contract Accessibility Could Be Improved

Table of Contents

| | |
|---|---|
| Introduction | 1 |
| Objectives | 1 |
| Scope and Methodology | 1 |
| Background | 2 |
| City Contracts | 2 |
| Findings and Recommendations | 3 |
| Most Contracts Accessible But Not Centralized | 3 |
| Contract Sample Accessible | 3 |
| Centralized Contract Repository Should Improve Accessibility | 4 |
| Contract Database Could Improve Contract Accessibility and Transparency | 6 |
| Recommendations | 7 |
| Appendix A | 9 |
| City Manager's Response | 9 |

Introduction

Objectives

We conducted this audit of contract accessibility under the authority of Article II, Section 216 of the Charter of Kansas City, Missouri, which establishes the Office of the City Auditor and outlines the city auditor's primary duties.

A performance audit provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making, and contribute to public accountability.¹

This report is designed to answer the following question:

- Are the city's executed contracts accessible?

Scope and Methodology

Our review focuses on determining how accessible executed city contracts are. Our audit methods included:

- Interviewing city staff to identify contract management and record-keeping practices and staff concerns about access to city contracts.
- Reviewing state statutes and regulations, and the city's Code of Ordinances and administrative regulations for requirements with regard to contract accessibility and retention.
- Reviewing professional literature to identify recommended practices related to contract accessibility and data transparency.

¹ Comptroller General of the United States, *Government Auditing Standards* (Washington, DC: U.S. Government Printing Office, 2011), p. 17.

- Reviewing a judgmental sample of 29 executed contracts to determine where contracts are being stored and whether the city is following recommended practices, regulations, and city policy for accessibility, retention, and transparency of records.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. No information was omitted from this report because it was deemed privileged or confidential.

In conducting our audit work, we identified a problem related to the accuracy of the status of some contracts on the city's open data portal. We communicated this information to the city manager in a separate memorandum.

Background

City Contracts

The city executes contracts to obtain a broad range of goods and services. The city also executes other types of contracts including construction, leases of city property, cooperative agreements, memorandums of understanding, license agreements, concession agreements, and non-municipal agency contracts.

The city must be able to access its executed contracts in order to manage contracts, litigate contract disputes, and respond to public requests for contracts. The Missouri Sunshine Law requires the city to provide copies of city contracts to the public. Due to state retention regulations, city contracts must be retained for a specific period even after the terms have been met or the contract has expired.

Findings and Recommendations

Most Contracts Accessible But Not Centralized

In our test of contract accessibility, contracts in our sample, which we identified through the city's financial system and the city's legislative tracking system, were accessible. There are contracts that are not included in either of those systems, however, that we were not able to test for accessibility.

City contracts are not centralized, although city regulations require centralization. Law Department staff reported difficulty accessing some city contracts that have become subjects of disputes including contracts that did not involve immediate financial obligations on the part of the city. A recommended practice for contract management is a centralized contract repository, which provides staff in different departments and locations easier access and helps ensure contracts are available long-term. To effectively manage and defend contracts, the city must know the location of contracts and be able to access them easily.

An electronic, centralized contract repository would further improve ease of contract access as well as provide staff with the ability to organize and search contracts. An electronic system could also provide easy online public access to contracts. The city's open data policy as well as public procurement recommended practices support online public accessibility of contracts.

Contract Sample Accessible

City staff successfully located the executed city contracts we requested. We selected a judgmental sample of 29 city contracts to test contract accessibility. Our sample included a variety of contract types, and contracts from almost every current department and some departments that no longer exist. We received all but one contract from the departments.

Because there is not a list of all city contracts, our sample was limited to contracts that are referenced in PeopleSoft (the city's financial system) or in LUSI (the city's legislative tracking system). These are contracts on which the city needs to make a payment and/or contracts that are

authorized by the City Council. Some contracts, such as cooperative agreements, do not always need the authorization of the City Council or involve city payments so they are not in PeopleSoft or LUSI. Since there is no easy way to identify these types of contracts, we could not determine whether they are accessible.

Centralized Contract Repository Should Improve Accessibility

City contract retention is not centralized, although city code and city regulation require centralized retention. City staff reported difficulty accessing some city contracts, including those that have become subjects of disputes. To effectively manage and defend contracts, the city must know the location of the contracts and be able to access them easily. A centralized repository allows staff in different departments and locations easier access and helps ensure contracts are available long-term.

City contracts are not centralized although city regulations require centralization. According to the Code of Ordinances, contract originals “shall be filed with the Finance Department and the department awarding the contract.”² However, not all contracts are filed in the Finance Department. The finance director certifies the availability of funds for contracts that require city funding. The Finance Department maintains a hard copy of these contracts. Because contracts that do not involve city funding do not require the certification of funds from the finance director, the Finance Department is unlikely to receive and maintain copies of these contracts. The Procurement Services Division also maintains contracts it executes for other departments; however, some departments execute their own contracts. Some contracts are not included in either the Finance Department’s centralized files or the Procurement Services Division’s database.

Administrative Regulation, 3-21, calls for an electronic centralization of contracts by requiring departments to “post all contracts issued to the PeopleSoft, Contract Data database.”³ The city does put limited contract information into a PeopleSoft module when the contract requires the director of finance to certify the availability of city funds. However, the city does not use PeopleSoft to store executed contracts, with the exception of some purchase orders. The city purchased a license for a PeopleSoft module several years ago with the capability to build and store contracts, but funding has not been allocated to implement it.

Some contracts have been difficult to locate. Law Department staff reported not knowing about, not being able to locate, or having difficulty

² Code of Ordinances, Kansas City, Missouri, Sec.3-65.

³ *Administrative Regulation 3-21*, "Contract and Procurement Policies and Procedures," July 19, 2007.

locating some city contracts that did not involve immediate financial obligations for the city. For example, two contracts involved in litigation that could not be found assigned future financial obligation for infrastructure, one to the city and one to another entity. Both agreements were signed over twenty-five years ago but were relevant in recent litigation. In the first example, if the second party to the lawsuit had not produced the missing contract, the city could have had more difficulty proving it did not have financial liability. In the other example, the city also had to rely on the second party's copy of the contract. In this case, the city was liable; however, the city has no assurance when using another party's contract copy that the contract was not altered after all parties signed it.

One department in our sample contacted several of their staff trying to find the contract we requested and eventually located it in email, rather than in an organized filing system. Personal emails are generally not accessible to others and may be lost if an employee leaves city employment.

Lost or difficult to access contracts can result in failure to protect the city's interest when there is a need to request repairs covered by warranty or when there is litigation with contractors. In addition, when the city is unable to find its own contracts, it reflects poorly on the city and damages public trust.

According to recommended practices, a basic component of good contract management is a centralized repository of contracts. To effectively manage and defend contracts, the city must know where contracts are and be able to access them easily. A centralized repository allows staff in different departments or locations more efficient, long-term access. Different entities within the organization need to be able to access information in the city's contracts and a centralized repository provides a single point of contact. Contract managers need to monitor terms and conditions of the contract to ensure the city receives what it contracted. Other departments or divisions contracting for similar goods or services can review contractors and contract terms for benchmarking purposes. Senior managers may need access to contracts to understand the organization's long-term obligations. The Law Department needs to be able to access contracts quickly when disputes with a contractor arise or the city is a party to litigation.

Stakeholders need to be able to access contracts over the duration of the contract and its retention period, which can sometimes last decades. Departments and staff come and go over the years. Storing all contracts

in one place assigns a location rather than multiple people in different locations to manage the storage.

In order to provide efficient access to executed contracts and recognize that the best location for contract centralization may change as departments are reorganized over time, the city manager should draft for council consideration an ordinance repealing Sec. 3-65 of the Code of Ordinances and requiring copies of all executed contracts, including non-monetary contracts, to be centralized in a location to be determined by the city manager.

Contract Database Could Improve Contract Accessibility and Transparency

An electronic, centralized contract repository would improve ease of contract access as well as provide city staff with the ability to organize and search contracts. An electronic system could also provide easy public access to contracts. The city's open data policy as well as public procurement recommended practices support public accessibility of contracts subject to valid confidentiality and other restrictions.

An electronic central repository of city contracts could improve access to city contracts. Contracts stored in an electronic database can be viewed at the click of a button eliminating the need to request a copy and wait for a response from an individual. With an electronic repository, it is also possible to organize and search contracts. The ability to search an electronic database would assist city attorneys in locating contracts. Searching by litigant or subject would be difficult and time-consuming with hard copy files.

Centralizing contracts electronically could provide an opportunity to improve public access to city contracts. Although the public can request copies of city contracts, members of the public are less likely than city staff to easily find the right department and right staff person from whom to request the contract. The public is also less likely than city staff to know a contract exists. If a centralized, electronic database of city contracts was available to the public, the public could easily search and access all contracts without having to interact with city staff, saving both the public's time and city resources.

City policy and recommended practices encourage transparency. The city's open data policy is that "public data will be made open and freely available to all online in a machine-readable, open format that can be easily retrieved...subject only to valid privacy, confidentiality,

security, and other legal restrictions.”⁴ The Institute for Public Procurement recommends public accessibility to public contracts. The Institute states that “public procurement should to the greatest extent practicable, be transparent in its practices, processes, policies and relationships with all stakeholders, while ensuring protection of confidential information.”⁵ The Institute says this transparency can be accomplished by integrating and utilizing technology systems including establishing a web-based reporting tool for entity data that includes current contracts.

In order to improve the accessibility and transparency of executed contracts, the city manager should require executed contracts be in an electronic centralized repository.

Recommendations

1. The city manager should draft for council consideration an ordinance repealing Sec. 3-65 of the Code of Ordinances and requiring copies of all executed contracts, including non-monetary contracts, to be centralized in a location to be determined by the city manager.
2. The city manager should require executed contracts be in an electronic centralized repository.

⁴ Code of Ordinances, Kansas City, Missouri, Sec. 2-2130.

⁵ The Institute for Public Procurement, *Global Best Practices, Transparency in Public Procurement*, 2012, <http://www.nigp.org/docs/default-source/New-Site/global-best-practices/transparency.pdf?sfvrsn=2>.

Contract Accessibility Could Be Improved

Appendix A

City Manager's Response

Contract Accessibility Could Be Improved

CITY OF FOUNTAINS
HEART OF THE NATION



KANSAS CITY
MISSOURI

Inter-Departmental Communication

Office of the City Manager


RECEIVED

JUL 21 2016

CITY AUDITOR'S OFFICE

Date: July 20, 2016

To: Douglas Jones, City Auditor

From: Troy M. Schulte, City Manager 

Subject: Response to Performance Audit: *Contract Accessibility Could Be Improved*

I have had the opportunity to review the audit on contract accessibility. My responses to your recommendation are detailed below.

1. **The city manager should draft for council consideration an ordinance repealing Sec. 3-65 of the Code of Ordinances and requiring copies of all executed contracts, including non-monetary contracts, to be centralized in a location to be determined by the city manager.**

Agree. The City Manager's Office will submit an ordinance repealing Sec. 3-65 of the Code of Ordinances after this audit is presented to the City Council.

2. **The city manager should require executed contracts be in an electronic centralized repository.**

Agree. My office will develop a new Administrative Regulation requiring that all contracts be stored in a centralized electronic repository. This repository will utilize the City's existing financial system and the City's open data systems to record and report all monetary and especially non-monetary contracts.